

## AMENDMENTS TO THE DRAWINGS

The drawings currently stand objected to under 37 CFR 1.83(a) because they fail to show “intake orifice 32” as described in the specification. Figure 1 has been amended in replacement sheet to show intake orifice 32; therefore the drawings are now in compliance with 37 CFR 1.83(a) and contain no new matter.

The drawings also currently stand objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include reference sign 40 as mentioned in the description. Figure 2 has been amended in replacement sheet to show filtering device 40; thus, the drawings are now in compliance with 37 CFR 1.84(p)(5) and contain no new matter.

Additionally, please note that reference numbers 31 and 33 were mislabeled in Figures 1 and 2 of the original application; therefore, Figures 1 and 2 have been amended to properly label said items in the replacement sheet.

### REMARKS

In response to the Office Action dated August 25, 2005, please consider the preceding amendments and the following remarks made in a good faith attempt to move prosecution of this application forward to a proper allowance of the claims.

Please note that any and all fees associated with this response, including any applicable extension fees under 37 C.F.R. 1.136, and any fees for newly presented claims, may be charged to the deposit account of the undersigned, **Account No. 50-0894**.

Applicant here requests such extensions under 37 C.F.R. 1.136 as may be necessary to render this response timely.

Please note that claims 1, 3, 5-6 and 10-11 have been amended and do not contain new matter. As such, Applicant believes claims 1-15 to be in condition for allowance.

#### **Amendments to the Specification**

The disclosure currently stands objected to because paragraph 0024 refers to figure 5 which is not noted in the description of drawings section. Paragraph 0024 has been amended to properly refer to figure 2 rather than figure 5. As such, the amended specification contains no new matter.

#### **Amendments to Claims**

Claims 1-3, 5-7 and 12 currently stand rejected under 35 USC 103(a) as being unpatentable over Voss (5,404,949) and Ridgeway, Jr. (5,878,813). Applicant asserts that such rejection is improper in light of amended Claim 1. Claim 1 has been amended to reflect the fact that "the flow control insert 31, in the preferred embodiment is compression fit to the intake

orifice 32 to shut off flow around the insert and direct the flow through the flow control orifice 33.” *Original Application*, page 9, lines 2-5. Thus, in the present invention, it is vital that the flow control insert fit snugly within the intake orifice requiring all flow to enter or exit the device through the flow control orifice. Ridgway, Jr. teaches a “protrusion 46 which is substantially cylindrical that is inserted within the spout of the sampler to pass within the spout and break the ball-spout seal and release fluid from the sampler.” *Office Action*, paragraph 13. However, not only does Ridgway, Jr. teach that the “protrusion” is used only to break the seal and “release” the fluid from the sampler, thus, failing to teach using the protrusion allowing flow into the device, but Ridgway, Jr. also fails to teach a protrusion with a snug fit to the intake orifice such that flow would only enter or exit through the protrusion. Ridgway, Jr. clearly teaches that the flow exiting the device is free to flow either through the protrusion or around the protrusion between the protrusion and the intake orifice. *Ridgway, Jr.*, column 6, lines 24-27; Fig. 4. To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974); MPEP 2143.03. Since the limitation of a flow control insert which fits snugly into an intake orifice such that all flow must enter or exit exclusively through the flow control orifice is not taught or suggested by either Voss or Ridgway, Jr., *prima facie* obviousness has not been established under 35 U.S.C. 103(a).

Claims 1 and 2 also currently stand rejected under 35 U.S.C. 103(a) as being unpatentable over Voss (5,404,949) and Mohs (5,753,831). Applicant asserts that such rejection is also inappropriate in light of amended claim 1. Mohs teaches a valve stem with a transverse bore which acts as an orifice; however, the valve stem is arranged in a telescopically extending and retracting configuration such that flow is allowed to enter or exit the device through the

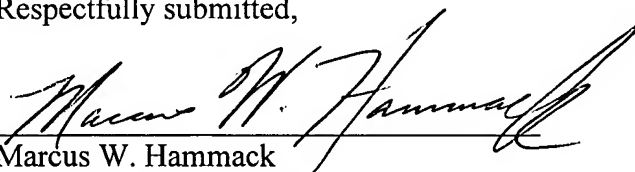
orifice in the extended position but not in the retracted position. *Mohs*, column 4, lines 41-45; Fig. 3. Conversely, claim 1 of the present invention has been amended to reflect the requirement that the flow control insert remain “snug” and stationary while in place allowing continuous flow into or out of the flow control orifice. *Original Application*, page 9, lines 2-5; Fig. 1. It is essential to the present invention that the valving device remain separate from the flow control insert in order to maintain reliability of the part as well as to economically and efficiently allow for replacement of the flow control insert with different sized flow control orifices which properly fit the particular application. That is, in order to change the flow metering system in *Mohs*, one must replace a complex part containing an extendable valve stem, orifice, and multiple other pieces. *Mohs*, Figure 3. In the present invention, in order to alter the flow metering, one merely replaces a simple, inexpensive insert containing a different sized orifice. *Original Application*, Fig. 1. Furthermore, the valve stem in *Mohs* contains complex movable parts, which are inherently less reliable and more costly than the fixed flow control insert of the present invention. To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974); MPEP 2143.03. Therefore, because the claim limitations of amended claim 1 which require a snugly fit flow control insert that allows continuous flow into and out of the device are not taught or suggested by *Mohs*, a *prima facie* case of obviousness has not been made under 35 U.S.C. 103(a) for amended claim 1.

Finally, dependent claims 2-15 currently stand rejected as being unpatentable over various prior art under 35 U.S.C. 103(a). However, since claims 2-15 are dependent from claim 1 and since amended claim one obviates Examiner’s 35 U.S.C. 103(a) rejections, *prima facie* obviousness has not been established for claims 2-15. If an independent claim is nonobvious

under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); MPEP 2143.03. Thus, since amended claim 1 is nonobvious under 35 U.S.C. 103, then claims 2-15 are also nonobvious.

Applicant respectfully submits, that in view of the preceding, Claims 1-15 are in condition for allowance. Reconsideration and withdrawal of the rejections are hereby requested, and allowance of Claims 1-15 at an early date is solicited. If impediments to allowance of the claims remain and a telephone conference between the undersigned and the examiner would help remove such impediments in the opinion of the Examiner, a telephone conference is respectfully requested.

Respectfully submitted,



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*April Chase*